

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 28, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: DEBORAH JACKSON,

Movant.

No. 16-3198
(D.C. Nos. 2:11-CV-02561-CM,
2:13-CV-02597-CM &
2:08-CR-20150-CM-2)
(D. Kan.)

ORDER

Before **LUCERO, GORSUCH**, and **McHUGH**, Circuit Judges.

Deborah Jackson seeks authorization to file a second or successive 28 U.S.C. § 2255 motion. For the following reasons, we deny authorization.

We may authorize the filing of a second or successive § 2255 motion if it is based on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” 28 U.S.C. § 2255(h)(2); *see also id.* § 2244(b)(3)(C). Ms. Jackson asserts that she is entitled to bring a successive § 2255 claim to reduce her sentence based on the new rule of constitutional law announced in *Johnson v. United States*, 135 S. Ct. 2551 (2015).

The *Johnson* decision involved a defendant who received a sentence enhancement under the Armed Career Criminal Act (“ACCA”). A defendant becomes eligible for an enhanced sentence under the ACCA if he or she has three prior convictions for “a violent felony or a serious drug offense.” 18 U.S.C. § 924(e)(1). A “violent felony” is defined as a crime “that . . . (i) has as an element the use, attempted use, or threatened use of

physical force against the person of another; or (ii) is burglary, arson, or extortion, involves use of explosives, or *otherwise involves conduct that presents a serious potential risk of physical injury to another.*” *Id.* § 924(e)(2)(B) (emphasis added). “The closing words of this definition, italicized above, have come to be known as the Act’s residual clause.” *Johnson*, 135 S. Ct. at 2556.

In *Johnson*, the Supreme Court held that “imposing an increased sentence under the residual clause of the [ACCA] violates the Constitution’s guarantee of due process.” 135 S. Ct. at 2563. And in *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016), the Court held that *Johnson* announced a new substantive rule that applies retroactively to cases on collateral review. We recently extended *Johnson*’s reach to defendants seeking authorization who received enhanced sentences under the career-offender provision of the Sentencing Guidelines because the residual clause in that provision mirrors the one declared unconstitutional in *Johnson*. *See In re Encinias*, ___ F.3d ___, 2016 WL 1719323, at *2 (10th Cir. Apr. 29, 2016) (per curiam).

Ms. Jackson, however, did not receive an increased sentence under the ACCA or an enhanced sentence under the career-offender provision of the guidelines. She was sentenced to life in prison, plus a 60-month consecutive sentence, after pleading guilty to conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. § 846 and possessing a firearm during and in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1).

Ms. Jackson asserts that “*Johnson* [and] *Welch* provided relief for § 924(c)(1) for 60 months off.” Mot. for Auth. at 8. But she offers no further explanation as to how the

new rule of constitutional law announced in *Johnson* supports her position. We see nothing in the *Johnson* decision that would invalidate Ms. Jackson's § 924(c) conviction and 60-month sentence for possessing a firearm during and in furtherance of a drug trafficking crime.

Accordingly, Ms. Jackson has failed to make a prima facie showing that she is entitled to authorization based on the new rule of constitutional law announced in *Johnson*. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk